

February 25, 2012

ARIZONA SUPREME COURT  
1501 W Washington St  
Phoenix, AZ 85007  
(Electronically via Rules Forum, only)

RE: R-12-0008 Petition to Amend Rules 4.1(d) & 5(c), Rules of CV Procedure; and Rule 41(C) & 41(D), Rules of Family Law Procedure

As a process server for over 24 years, I have encountered numerous parties at residences who, while they appeared on the surface to be of "suitable age and discretion", after questioning the person, determined they were not. The process server, constable or sheriff needs to have a standard for which a person may be served. Most process servers, constables and deputy sheriffs use common sense in making substituted service, however, there are exceptions. The proposed rule gives a standard age at which a person is assumed to be of suitable age and discretion. Whether or not that is true, is primarily dependent on other factors exclusive of appearance at the time of service.

In California, known for its progressive efforts (read, *overregulation*), the service of legal process is addressed in its Code of Civil Procedure (CCP) and does not address the issue of disability or other circumstances of the person served, except age. Neither does any other state researched. Mr. King's concern "...regardless of whether the person's disability or incompetence was obvious" is not legislatively addressed, nor is it addressed in the Federal rules. In Arizona, currently, there is likewise no specific provision to address a person's disability or incompetence. Incompetence to receive service of process is an issue which must be addressed by the court, on a case by case basis.

However, no self respecting Process Server, Sheriff or Constable would serve a person who is obviously incompetent to understand the nature of the legal documents presented to him or her.

Mr. King's supposition assumes that the disability of a person infringes upon their ability to comprehend legal process. Shall one assume that Stephen Hawking has no capacity to understand legal process? He has proven to be the most brilliant physicist since Einstein. Or shall we assume that every person who has a disabled license plate or placard likewise would be incompetent to understand the legal process served upon them? I think not.

In Arizona, process servers are certified, and must attend annual continuing educational events. Part of the educational criteria in the Arizona Certified Process Server (ACPS) program sponsored by the Arizona Process Servers Association (APSA) is the discussion section of the training. Having attended the APSA ACPS training in the past, my personal experience has been

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*In Arizona: Rapid RPS (AZ), LLC Arizona Certified Process Servers  
Arizona Certified Legal Document Preparer (AZCLDP # 81293)  
In California: Rapid Legal Support Services, Inc. California Registered Process Servers  
Registered Process Server #2176, Orange County, CA*

that this question has been asked and answered. Where the Process Server "...shall maintain the best interests of the client by maintaining a high standard of work and reporting to a client the full facts determined as a result of the work and effort expended whether they are advantageous or detrimental to the client" (ACJA §7-204, Appendix A, Standard 4(e)), the legal process must be "...served in a manner reasonably calculated to bring the proceedings to the defendant's attention." (*Moya v. Catholic Archdiocese*, (92 N.M. 278, 587 P.2d 425 (1978)).

So, while the person with whom the legal process is deposited may be disabled, Mr. King's concerns are addressed not only in our professional ethic as addressed, but in case law. In fact, it is the phrase, "suitable age and discretion" which is nebulous, vague and inefficient. The proposed rule would give a uniform standard by which the *minimum* age of depositing legal process with a person other than the defendant is set forth. The issue of obvious incompetence is already set forth in Process Server education, ethics, and case law. Further issues may be addressed to the Court in a Motion to Vacate or like proceeding.

In my experience, when circumstances were reported to my clients where I would not make the service (such as an 8-year old latchkey child or a person who obviously suffers with dementia being the only person home, etc.), in the overwhelming majority, the *attorneys* who hired me for service have directed that service be made upon that person, anyway. Needless to say in those circumstances, I have referred the attorney to the provisions of ARCP Rule 4.1(m) and declined to perform the service. Yes, it has cost me a client or two, however, I'll be happy to stand my ground and defend my actions in such circumstances, rather than render an obviously defective service.

So, while Mr. King brings forth this concern, it has been previously been addressed by the courts and legislature in Arizona. However, to assuage Mr. King's concerns, perhaps the language may be amended by the Petitioner to read:

Leaving a copy of the summons, pleading and other documents being served at that individual's dwelling house or usual place of abode in the presence of a member of the household or a person apparently in charge therein, who stated or appeared that he or she was at least 15 years of age at the time of service, *who appeared to be competent to accept service of process*, and who shall be informed of the general nature of the legal process.

I support APSA's efforts in the proposed rule changes, and would urge their adoption by the Supreme Court.

Very truly yours,

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**BARRY R. GOLDMAN**

